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S.B. CIVIL MISC. APPEAL NO.978/2007.
Sagar Mal & Ors. Vs. Kheta Ram & Ors.

Date of Order :: 27th February 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. M.S. Panwar, for the appellants.

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BY THE COURT:

By way of this appeal the claimants, parents and grand-parents of the vehicular accident victim Manish, about 20 years in age, seek to assail the award dated 14.11.2006 made by the Motor Accidents Claims Tribunal [Additional District Judge (Fast Track) No.4], Jodhpur in Claim Case No.82/2004 whereby the Tribunal has assessed their loss at Rs.7,45,000/- but has deducted 20% therefrom towards contributory negligence of the deceased, and therefore, has made the award of compensation in the sum of Rs.5,96,000/- together with interest @ 7.5% per annum from the date of filing of the claim application.

In the night of 13.01.2002, at about 11:50 p.m., the deceased Manish while riding his Hero Honda motorcycle and going towards his house at Pratap Nagar, Jodhpur was hit by an oncoming truck bearing registration No. RJ 19 G 7741 near Pratap Nagar Filter House; and died on the spot

due to the injuries received in accident. Asserting that the accident occurred for rash and negligent driving of the truck-driver, the claimants sought compensation against the persons related with the said truck. The claim for compensation was put to contest by the insurer of the offending vehicle with the submissions, inter alia, that the deceased collided with the truck taking his motorcycle to the wrong side of the road and the accident occurred for his own negligence.

After framing of necessary issues, taking evidence and hearing the parties, the Tribunal has observed in issue No.1 relating to responsibility towards accident that challan was filed against the truck-driver by the police and the site inspection memo prepared during investigation shows that the accident occurred nearly in the middle of 24 feet wide road but the truck was found shifted about a feet into the wrong side while hitting the motorcyclist. The Tribunal has observed that at the relevant time of around mid-night, it was required of the drivers of the respective vehicles to have taken reasonable care and caution and the accident occurred for contribution on the part of both the drivers; but then, has put the contribution on the motorcyclist at 20% and that on the truck driver at 80%.

Taking up quantification of compensation in issue No.4, the Tribunal has referred to the statement of the father of deceased that he was about 20 years in age, was working

as Marketing Executive with Aptec Computers, was earning salary of Rs.8,000/- per month, was a brilliant student and was his only son. The Tribunal has noticed that the age of the deceased was stated at 21 years in the postmortem report and his salary was shown at Rs.8,200/- in the certificate Ex.17. However, the Tribunal has taken average monthly income of the deceased at Rs.6,000/- and after deducting one-third wherefrom and with application of multiplier of 15 in view of the age of the parents at 43 and 45 years respectively, has assessed pecuniary loss at Rs.7,20,000/-. The Tribunal has allowed Rs.20,000/- towards non-pecuniary loss and Rs.5,000/- towards funeral expenses and has assessed total loss for the claimants at Rs.7,45,000/- but then has deducted 20% for contributory negligence of the deceased and has thereby made the award of compensation in the sum of Rs.5,96,000/-; and has also allowed interest @ 7.5% per annum from the date of filing of the claim application.

Assailing the award aforesaid, learned counsel has strenuously contended that it was clearly established from the evidence on record that the accident occurred when the truck was taken to the wrong side and there being no other evidence on the part of the non-applicants, the Tribunal has been in error in putting 20% contributory negligence on the deceased. Learned counsel has also questioned the

quantum of compensation as being low with the submissions that when the Tribunal has observed that there was no rebuttal of the evidence led by the claimants that the deceased was earning Rs.8,200/- per month and that he was a brilliant student dealing in computers then there was no reason to have put an estimate on the income of the deceased only at Rs.6,000/- per month. Learned counsel has referred to the decision of the Hon'ble Supreme Court in Kaushnuma Begum & Ors. Vs. New India Assurance Company Limited & Ors.: 2001 WLC (SC) 116 to contend that the uncontroverted oral assertion of the income of the deceased ought to have been accepted by the Tribunal.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the award in its totality, this Court is satisfied that the findings as recorded by the Tribunal call for no interference at the instance of the claimants-appellants.

So far contributory negligence of the deceased is concerned, true it is that the Tribunal has put contributory negligence on the part of deceased at 20% after finding that the truck had intruded about a feet to its wrong side while hitting the deceased motorcyclist; however, the fact cannot be lost sight of that the accident occurred almost in the middle of 24 feet wide road. Usually, such incident involving two on-

coming vehicles in the middle of the road is the result of omission of care and caution on the part of the drivers of both the vehicles. Moreover, in the present case, the deceased was proceeding on his two-wheeler in the midnight of winter month of January; and from the site inspection memo it is clear that there was enough space available on left hand side for him to have taken a safer course ahead. With the accident occurring almost in the middle of the road, merely because the offending truck is shown have intruded one feet into the other lane, it cannot be concluded that the occurrence was due to exclusive negligence of the truck-driver. The Tribunal has yet taken a view rather lenient in favour of the claimants and has put the contribution on the part of the deceased only at 20%. On the finding on responsibility towards accident, the Tribunal has erred, if at all, in favour of the claimants and not against them.

Further, in this case the assessment of pecuniary loss for the claimants has also been rather excessive. The submission made by the learned counsel in the abstract that for want of its rebuttal, the assertion as made by the claimants on the income of the deceased ought to have been accepted does not appear correct nor the decision of the Hon'ble Apex Court in Kaushnuma Begum (supra) could be read laying down any such principle of universal application. In the said

case of Kaushnuma Begum, for quantification of compensation for the wife and children of about 35 years old victim, said to be engaged in the business of manufacturing steel trunks, the Hon'ble Court accepted his income, as stated by the claimants, at Rs. 1,500/- per month after observing that no contra evidence was adduced in regard to that aspect and, therefore, it was reasonable to believe that the monthly income of the deceased was Rs. 1,500/ per month. Obviously, the Hon'ble Apex Court considered it appropriate to accept unrebutted testimony of the claimants on the income of the deceased in the said case because that appeared reasonable.

A reasonable estimate on the income of the deceased particularly for the purpose of assessing loss for the claimants is dependant upon variety of facts, factors and circumstances; and though in a given case want of rebuttal could also be one of the circumstance relevant, yet it cannot be taken decisive of the point in every case. For that matter, in a given case even an admission of the non-applicants about the income of and contribution from the deceased might not be taken conclusive; because ultimately just compensation admissible in each individual case is to be assessed after considering the overall picture.

Moreover, the submission as made in this appeal is not of substance even on the fact situation. The Tribunal has

noticed the assertion of the claimants that the deceased was earning Rs.8,200/- per month but then has referred to the statement of AW-3 Rakesh Panwar that the deceased was working in his firm Aptec Computer Centre and was getting salary of Rs.6,000/- and other Rs.2,200/- towards allowances. The Tribunal cannot be said to have erred in not taking into consideration such other components of income of the deceased like allowances for the purpose of assessment of reasonable loss of contribution for the claimants.

Thereafter, the Tribunal has further erred in favour of the claimants by taking entire of two-third of the estimated income of the deceased towards the loss of contribution. The deceased being an unmarried person in about 20-21 years of age, the aspect of his likely marriage in future and thereby contribution to the claimants, parents and grand-parents, getting receded substantially could not have been over-looked. Viewed in that light, the assessment of pecuniary loss at Rs.7,20,000/- as made by the Tribunal appears to be rather excessive. This Court is of opinion that not more than one-half of the estimated income of the deceased could have been taken towards loss of contribution for the claimants and in that view of the matter, with application of multiplier of 15 to reasonable loss of contribution at Rs.3,000/- per month, the pecuniary loss could stand only at

Rs.5,40,000/-. It is, therefore, obvious that even when no reduction is made for contributory negligence, the ultimate amount of award in this case cannot stand in excess of Rs.5,96,000/- allowed by the Tribunal.

It could readily be seen that if the finding on contributory negligence stands and then the award of compensation is made with application of relevant principles, the ultimate amount available as compensation in this case would stand only lower than that awarded by the Tribunal. The Tribunal has awarded interest @ 7.5% per annum that also appears excessive for the award made in the month of November 2006.

Viewed from any angle, the award of compensation as made in this case remains rather on the higher side and rules out any scope for enhancement.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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